



DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 501

[Docket Number OFAC-2020-0001]

Inflation Adjustment of Civil Monetary Penalties Related to Reporting and Recordkeeping

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is issuing this interim final rule to further implement the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, by adjusting for inflation its civil monetary penalties for failure to comply with certain recordkeeping and reporting requirements, which are contained in OFAC's Economic Sanctions Enforcement Guidelines in OFAC's Reporting, Procedures and Penalties Regulations.

DATES: This rule is effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER]. Comments must be received on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: You may submit comments by either of the following methods:

Federal eRulemaking Portal: www.regulations.gov. Follow the instructions on the website for submitting comments. Refer to Docket Number OFAC-2020-0001.

Mail: Attn: Request for Comments (Inflation Adjustment of Civil Monetary Penalties Related to Reporting and Recordkeeping), Office of Foreign Assets Control, Department of the

Treasury, 1500 Pennsylvania Avenue N.W., Freedman's Bank Building, Washington, DC 20220.
Refer to Docket Number OFAC-2020-0001.

Instructions: All submissions received must include the agency name and the docket number that appears at the end of this document. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202-622-2480; Assistant Director for Regulatory Affairs, 202-622-4855; or Assistant Director for Sanctions Compliance & Evaluation, 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available from OFAC's website (<http://www.treasury.gov/ofac>).

Background

The Federal Civil Penalties Inflation Adjustment Act

Section 4 of the Federal Civil Penalties Inflation Adjustment Act (1990 Pub. L. 101-410, 104 Stat. 890; 28 U.S.C. 2461 note), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114-74, 129 Stat. 599, 28 U.S.C. 2461 note) (collectively, the FCPIA Act), requires each federal agency with statutory authority to assess civil monetary penalties (CMPs) to adjust CMPs for inflation according to a formula described in section 5 of the FCPIA Act. One purpose of the FCPIA Act is to ensure that CMPs continue to maintain their deterrent effect through periodic cost-of-living based adjustments.

The FCPIA Act directs agencies to adjust the level of CMPs for inflation with an initial “catch-up” adjustment to be effective no later than August 1, 2016, followed by annual adjustments. The FCPIA directs the Office of Management and Budget (OMB) to provide agencies with guidance and Consumer Price Index for all Urban Consumers (CPI-U)-related multipliers for the initial catch-up adjustment and subsequent annual adjustments.

OFAC currently is authorized to impose CMPs pursuant to five statutes: the Trading with the Enemy Act (50 U.S.C. 4315) (TWEA); the International Emergency Economic Powers Act (50 U.S.C. 1705) (IEEPA); the Antiterrorism and Effective Death Penalty Act of 1996 (18 U.S.C. 2339B) (AEDPA); the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1906) (FNKDA); and the Clean Diamond Trade Act (19 U.S.C. 3907) (CDTA).

OFAC issued an initial catch-up adjustment rule for CMPs pursuant to these statutes on August 1, 2016 (81 FR 43070, July 1, 2016), and issued annual CMP increases on February 10, 2017 (82 FR 10434, February 10, 2017), March 19, 2018 (83 FR 11876, March 19, 2018), June 14, 2019 (84 FR 27714, June 14, 2019), and April 9, 2020 (85 FR 19884, April 9, 2020).

OFAC inadvertently omitted from its initial catch-up regulation and subsequent annual increases its CMPs for failure to comply with a requirement to furnish information, the late filing of a required report, and failure to maintain records, which are located in its Economic Sanctions Enforcement Guidelines in appendix A to 31 CFR part 501. This interim final rule combines the catch-up adjustment that would have become effective August 1, 2016, plus the annual adjustments for 2017 through 2020 for these CMPs.

In addition, OFAC is making technical edits to the authority citation for part 501 to conform to *Federal Register* guidance.

Calculation Method for Catch-Up Adjustments

In order to complete the catch-up adjustment for CMPs, the FCPIA Act directs agencies to identify when the CMP amount or range was established or last adjusted, other than adjustments pursuant to the FCPIA Act. Agencies are directed to use that amount or range as a starting point for performing calculations. The catch-up calculations therefore exclude prior inflationary adjustments under the FCPIA Act. The FCPIA Act directs agencies to calculate initial catch-up adjustments based on the percent change between the CPI-U for the month of October in the year of the last non-FCPIA-Act-based adjustment and the October 2015 CPI-U. In accordance with the FCPIA Act, the amount of the CMP catch-up adjustment shall not exceed 150 percent of the corresponding level in effect on November 2, 2015 (the “maximum adjustment”), and agencies must round all CMP levels to the nearest dollar after applying the multiplier.

On February 24, 2016, OMB issued written guidance providing agencies with CPI-U-related multipliers to use when adjusting the CMP level or range of CMP levels based on the year the CMP was established or last adjusted by statute or regulation. (*Memorandum for the Heads of Executive Departments and Agencies: Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (OMB Catch-Up Guidance)). *Catch-Up Adjustments for Failure to Comply with a Requirement to Furnish Information and the Late Filing of a Required Report*

OFAC’s CMPs for failure to comply with a requirement to furnish information pursuant to 31 CFR 501.602 and the late filing of a report set forth in regulations or a specific license are contained in sections IV.A and B, respectively, of appendix A to 31 CFR part 501. OFAC established these CMPs on September 8, 2008 (73 FR 51933, September 8, 2008), and OFAC has not adjusted them since. Pursuant to the OMB Catch-Up Guidance, the inflation factor for

catch-up adjustments for these CMPs is 1.09819, with a maximum allowable adjustment of 150 percent of the CMP that was in effect on November 2, 2015.

The CMP established in 2008 for failure to furnish information pursuant to 31 CFR 501.602 irrespective of whether any other violation is alleged is \$20,000. Applying the multiplier of 1.09819 results in a catch-up CMP of \$21,964. The CMP established in 2008 for failure to furnish information pursuant to 31 CFR 501.602 where OFAC has reason to believe that the apparent violation(s) involves a transaction(s) valued at greater than \$500,000, irrespective of whether any other violation is alleged, is \$50,000. Applying the multiplier of 1.09819 results in a catch-up CMP amount of \$54,910. The CMP established in 2008 for the late filing of a required report, whether set forth in regulations or in a specific license, if filed within the first 30 days after the report is due, is \$2,500. Applying the multiplier of 1.09819 results in a catch-up CMP amount of \$2,745. The CMP established in 2008 for the late filing of a required report, whether set forth in regulations or in a specific license, if filed more than 30 days after the report is due, is \$5,000. Applying the multiplier of 1.09819 results in a catch-up CMP amount of \$5,491. The 2008 CMP for the late filing of a required report, whether set forth in regulations or in a specific license, if the report relates to blocked assets, is an additional \$1,000 for every 30 days that the report is overdue, up to five years. Applying the multiplier of 1.09819 results in a catch-up CMP amount of \$1,098. None of these catch-up increases exceeds the maximum adjustment amount. These catch-up increases are shown in Column 2 of Table 1.

Catch-up Adjustment for Failure to Maintain Records in Conformance with the Requirements of OFAC's Regulations or of a Specific License.

OFAC last adjusted its CMP for failure to maintain records in conformance with the requirements of OFAC's regulations or of a specific license, which is located in section IV.C of appendix A to 31 CFR part 501, on November 9, 2009 (74 FR 57593, November 9, 2009). The

2009 adjustment of this CMP provides for a penalty in an amount up to \$50,000. Pursuant to the OMB Catch-Up Guidance, the relevant inflation factor for the catch-up adjustment for this CMP is 1.10020, with a maximum allowable adjustment of 150 percent of the CMP that was in effect on November 2, 2015. Applying the multiplier of 1.10020 to this CMP results in the catch-up amount up to \$55,010, which does not exceed the maximum adjustment. This catch-up figure is shown in Column 2 of Table 2.

Calculation Method for 2017, 2018, 2019, and 2020 Adjustments

The FCPIA Act requires agencies to adjust CMPs annually for inflation subsequent to the initial catch-up adjustment. These annual adjustments are to be based on the percent change between the CPI-U for the October preceding the date of the adjustment and the prior year's October CPI-U. Each December, OMB issues the adjustment multiplier for the upcoming year's calculations. In order to complete the annual adjustment, each CMP (as revised by the catch-up adjustment) is multiplied by the adjustment multiplier for that year. Under the FCPIA Act, any increases in CMPs must be rounded to the nearest multiple of \$1.

The adjustment multiplier for the 2017 CMP increase was 1.01636, as set forth in OMB Memorandum M-17-11 of December 16, 2016 (*Memorandum for the Heads of Executive Departments and Agencies: Implementation of the 2017 Annual Adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*). For the 2018 CMP increase, OMB Memorandum M-18-03 of December 15, 2017 provided an adjustment multiplier of 1.02041 (*Memorandum for the Heads of Executive Departments and Agencies: Implementation of Penalty Inflation Adjustments for 2018, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*). For the 2019 CMP increase, OMB Memorandum M-19-04 of December 14, 2018 stated the adjustment multiplier was 1.02522 (*Memorandum for the Heads of Executive Departments and Agencies: Implementation*

of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015). For the 2020 CMP increase, OMB Memorandum M-20-05 of December 16, 2019 provided an adjustment multiplier of 1.01764 (*Memorandum for the Heads of Executive Departments and Agencies: Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*).
Adjustments for 2017, 2018, 2019, and 2020 for Failure to Comply with a Requirement to Furnish Information and the Late Filing of a Required Report

If OFAC had calculated the 2017 annual adjustment for its CMPs for failure to comply with a requirement to furnish information and the late filing of a report, each of the catch-up CMP amounts would have been multiplied by the OMB-provided factor of 1.01636. The resulting amounts for the 2017 CMPs are shown in Column 3 of Table 1. If OFAC had calculated the 2018 annual adjustment, the 2017 CMPs would have been multiplied by the OMB-provided factor of 1.02041. The resulting amounts for the 2018 CMPs are shown in Column 4 of Table 1. If OFAC had calculated the 2019 CMP adjustment, the 2018 CMPs would have been multiplied by the OMB-provided factor of 1.02522. The resulting amounts for the 2019 CMPs are shown in Column 5 of Table 1.

For the 2020 CMP increases, OMB provided an adjustment factor of 1.01764. OFAC multiplied the 2019 CMP amounts by this factor, resulting in the 2020 CMP amounts as shown in Column 6 of Table 2. These 2020 CMP amounts will be effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER] for associated violations that occurred after November 2, 2015 for which penalties were assessed on or after [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

Adjustments for 2017, 2018, 2019, and 2020 for Failure to Maintain Records in Conformance with the Requirements of OFAC's Regulations or of a Specific License

If OFAC had calculated the 2017 annual adjustment for its CMP for failure to maintain records in conformance with the requirements of OFAC's regulations or of a specific license, the catch-up CMP amount would have been multiplied by the OMB-provided factor of 1.01636.

The resulting amount for the 2017 CMP is shown in Column 3 of Table 2. If OFAC had calculated the 2018 annual CMP adjustment, the 2017 CMP would have been multiplied by the OMB-provided factor of 1.02041. The resulting amount for the 2018 CMP is shown in Column 4 of Table 2. If OFAC had calculated the 2019 CMP adjustment, the 2018 CMP would have been multiplied by the OMB-provided factor of 1.02522. The resulting amount for the 2019 CMP is shown in Column 5 of Table 2.

For the 2020 CMP increase, OMB provided an adjustment factor of 1.01764. OFAC multiplied the 2019 CMP amount by this factor, resulting in the 2020 CMP amount as shown in Column 6 of Table 2. This 2020 CMP amount will be effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER] for associated violations that occurred after November 2, 2015 for which penalties were assessed on or after [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

Summary of CMP Increases in This Rule

The CMP for failure to comply with the requirement to furnish information pursuant to 31 CFR 501.602 irrespective of whether any other violation is alleged will increase from \$20,000 to \$23,765. The CMP for failure to comply with a requirement to furnish information, where OFAC has reason to believe that the apparent violation(s) that is the subject of the requirement to furnish information involves a transaction(s) valued at greater than \$500,000, irrespective of whether any other violation is alleged, will increase from \$50,000 to \$59,413. The CMP for late

filing of a required report, whether set forth in regulations or in a specific license, if filed within the first 30 days after the report is due will increase from \$2,500 to \$2,970. The CMP for late filing of a required report, whether set forth in regulations or in a specific license, if filed more than 30 days after the report is due, will increase from \$5,000 to \$5,942. The CMP for late filing of a required report, whether set forth in regulations or in a specific license, if the report relates to blocked assets, an additional CMP for every 30 days that the report is overdue, up to five years, will increase from \$1,000 to \$1,189. The CMP for failure to maintain records in conformance with the requirements of OFAC's regulations or of a specific license will increase from a maximum of \$50,000 to \$59,522.

Table 1—CMPs for failure to comply with a requirement to furnish information and the late filing of a report

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Violation	Existing CMP	2016 catch-up CMP (catch-up factor of 1.09819 applied to existing CMP)	2017 adjusted CMP (factor of 1.01636 applied to catch-up CMP)	2018 CMP (factor of 1.02041 applied to 2017 CMP)	2019 CMP (factor of 1.02522 applied to 2018 CMP)	2020 CMP (factor of 1.01764 applied to 2019 CMP) This is the penalty effective [INSERT DATE THAT IS 30 DAYS FROM DATE OF PUBLICA TION IN FEDERAL REGISTE R]

Failure to furnish information pursuant to 31 CFR 501.602 irrespective of whether any other violation is alleged.	\$20,000	\$21,964	\$22,323	\$22,779	\$23,353	\$23,765
Failure to furnish information pursuant to 31 CFR 501.602 where OFAC has reason to believe that the apparent violation(s) involves a transaction(s) valued at greater than \$500,000, irrespective of whether any other violation is alleged.	\$50,000	\$54,910	\$55,808	\$56,947	\$58,383	\$59,413
Late filing of a required report, whether set forth in regulations or in a specific license, if filed within the first 30 days after the report is due.	\$2,500	\$2,745	\$2,790	\$2,847	\$2,919	\$2,970
Late filing of a required report, whether set forth in regulations or in a specific license, if filed more than 30 days after the report is due.	\$5,000	\$5,491	\$5,581	\$5,695	\$5,839	\$5,942

Late filing of a required report, whether set forth in regulations or in a specific license, if the report relates to blocked assets, an additional CMP for every 30 days that the report is overdue, up to five years.	\$1,000	\$1,098	\$1,116	\$1,139	\$1,168	\$1,189
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Table 2—CMPs for failure to maintain records in conformance with the requirements of OFAC’s regulations or of a specific license

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Violation	Existing CMP	2016 catch-up CMP (catch-up factor of 1.10020 applied to existing CMP)	2017 adjusted CMP (factor of 1.01636 applied to catch-up CMP)	2018 CMP (factor of 1.02041 applied to 2017 CMP)	2019 CMP (factor of 1.02522 applied to 2018 CMP)	2020 CMP (factor of 1.01764 applied to 2019 CMP) This is the penalty effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER]
Failure to maintain records in conformance with the requirements of OFAC’s regulations or of a specific license.	\$50,000	\$55,010	\$55,910	\$57,051	\$58,490	\$59,522

The adjusted CMP amounts described in this rule are applicable only to CMPs assessed after [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], whose associated violations occurred after November 2, 2015, the date of enactment of the FCPIA Act.

Procedural Requirements

Notice and Comment

As required by the FCPIA Act, these amendments are being published as an interim final rule with an effective date of [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Although other notice and comment procedures are not required, OFAC invites comments on this rule related to the catch-up adjustment only. The FCPIA Act expressly exempts the inflation adjustments from the notice and comment requirements of the Administrative Procedure Act, by directing agencies to adjust CMPs for inflation “notwithstanding section 553 of title 5, United States Code” (Pub. L. 114-74, 129 Stat. 599; 28 U.S.C. 2461 note).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose information collection requirements that would require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects for 31 CFR Part 501

Administrative practice and procedure, Banks, banking, Blocking of assets, Enforcement guidelines, Exports, Foreign trade, Licensing, Penalties, Recordkeeping, Sanctions.

For the reasons set forth in the preamble, 31 CFR part 501 is amended as follows:

PART 501—REPORTING, PROCEDURES AND PENALTIES REGULATIONS

1. The authority citation for part 501 is revised to read as follows:

Authority: 8 U.S.C. 1189; 18 U.S.C. 2332d, 2339B; 19 U.S.C. 3901–3913; 21 U.S.C. 1901–1908; 22 U.S.C. 287c, 2370(a), 6009, 6032, 7205, 8501–8551; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); 31 U.S.C. 321(b); 50 U.S.C. 1701–1706, 4301–4341.

APPENDIX A TO PART 501—[AMENDED]

2. In appendix A to part 501:

a. Amend paragraph IV.A. as follows:

- i. Remove “\$20,000” and in its place add “\$23,765”.
- ii. Remove “\$50,000” and in its place add “\$59,413”.

b. Amend paragraph IV.B. as follows:

- i. Remove “\$2,500” and add in its place “\$2,970”.
- ii. Remove “\$5,000” and add in its place “\$5,942”.
- iii. Remove “\$1,000” and add in its place “\$1,189”.

5. In paragraph IV.C., remove “\$50,000” and add in its place “\$59,522”.

Dated: August 27, 2020.

Bradley T. Smith,
Deputy Director, Office of Foreign Assets Control.

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